



## **ENVIRONMENTAL PROTECTION AGENCY**

### **[Petition I-2019-3; FRL-10004-45-Region 1]**

#### **Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Wheelabrator Environmental System Inc., Wheelabrator Concord Company, L.P., Concord, New Hampshire**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final order on petition to object to state operating permits.

**SUMMARY:** The EPA Administrator signed an Order, dated October 30, 2019, denying a petition dated March 14, 2019, filed by Anthony Caplan, Katherine Lajoie, Rebecca MacKenzie, and Janet Ward (the Petitioners). The Petitioners requested that the EPA object to a proposed Clean Air Act (CAA) title V operating permit (Permit No. TV-0032) issued by the New Hampshire Department of Environmental Services (NHDES) to Wheelabrator Environmental System, Inc., Wheelabrator Concord Company, L.P. (Wheelabrator), a large municipal waste incinerator located in Concord, New Hampshire.

**ADDRESSES:** Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 1; Air and Radiation Division; 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109-3912. The Order is also available electronically at the following address: [https://www.epa.gov/sites/production/files/2019-11/documents/wheelabrator\\_response2019.pdf](https://www.epa.gov/sites/production/files/2019-11/documents/wheelabrator_response2019.pdf).

**FOR FURTHER INFORMATION CONTACT:** Jessica Kilpatrick, Air Permits, Toxics, and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1652, email [kilpatrick.jessica@epa.gov](mailto:kilpatrick.jessica@epa.gov).

**SUPPLEMENTARY INFORMATION:**

The CAA affords the EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA’s 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

The Petitioners submitted a petition on March 14, 2019, requesting that the EPA object to the proposed CAA title V operating permit issued by NHDES to Wheelabrator (Permit No. TV-0032). The Petitioners alleged that (1) the operation of the Wheelabrator incinerator violates New Hampshire’s Revised Statutes Annotated (RSA) 125-C, Title 10 Public Health, Chapter 125-C Air Pollution Control, Section 125-C:1 and releases persistent toxic substances, such as lead, mercury, cadmium, and dioxin, that "accumulate in our bodies (known as body burden) and in our environment (known as toxic loading) and cause harm in low doses;" (2) that "[s]napshot testing of smokestack emissions can neither determine nor ensure continuous compliance with air standards that are themselves not health based;" and that NHDES “has discretionary authority to either deny or approve a Title V permit and is not constrained by a requirement to only consider whether Wheelabrator's stack test results comply with emission standards;" (3) Wheelabrator violated state and federal law by incinerating used baghouse filters; and (4) the NHDES has mischaracterized its authority under New Hampshire’s RSA 125C:13 and CAA § 129(e) and that NHDES can deny, suspend, or revoke the permit, or order measures beyond existing emission limitations to protect public health.

On October 30, 2019, the Administrator issued an Order denying the petition. The Order explains the EPA's basis for denying the petition.

Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**, 60 days from the date this notice is published in the Federal Register.

Dated: January 21, 2020.

Dennis Deziel,  
Regional Administrator,  
EPA Region 1.

[FR Doc. 2020-02010 Filed: 1/31/2020 8:45 am; Publication Date: 2/3/2020]